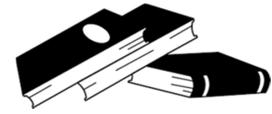


Education Law: Special Education



See also:

- Right to Attend School
- Suspensions
- Expulsions



Who has a legal right to “special education”?

Students who are identified as “exceptional” have a right to special education. The categories of exceptionality are: Behaviour, Communication, Intellectual, Physical, and Multiple (more than one). Most are considered disabilities under the Ontario *Human Rights Code*.

How are students identified as exceptional?

Parents can make a written request for an “Identification, Placement and Review Committee” (IPRC) meeting to be held.

Students of any age, who believe they have special needs, should tell the principal who can request an IPRC based on the student’s request or on the advice of a teacher; this does not require the parents’ consent.

Within 15 days of an IPRC request, the Principal must give parents a copy of the school board’s Guide to Special Education explaining the processes and the parent’s rights; and a written notice of the approximate date of the IPRC. The principal may also ask the parent for written consent to conduct a health and/or psychological assessment of the student. The principal cannot refuse to refer the student to an IPRC.

What happens at the IPRC meeting?

There will be at least 3 IPRC members at the meeting, including a Principal or a Superintendent. They will listen to all the information provided to them and make a decision in writing. The decision must state the student’s strengths and needs, type of exceptionality and classroom placement. The IPRC can also make recommendations for programs and services that they believe the student should receive.

The IPRC must give parents, and students over 16, a copy of the decision. If the parents agree with the decision, the student will be placed in the appropriate type of class. If a parent does not agree but does not appeal the decision, the student will be placed after 30 days. If the parents appeal the decision, then the placement will not change until the appeal is over. Whether there

is an appeal or not, the school must always try to accommodate the student's needs in the meantime.

What are the rights of parents and students at an IPRC?

Parents, and students over 16, have a right to attend and give their views and information. Parents may bring a representative to speak for them, an interpreter if needed, a support person (e.g. family member or friend) and someone who can speak about the student's needs, such as a representative from a service agency.

The more information that parents have to share, the better the IPRC will be able to do its job, especially if parents and the school disagree about the needs of the student. Information may include reports from doctors and psycho-educational assessments; and insight on how the student learns best or ways to help the student concentrate or improve behaviour.

Where can an exceptional student be placed?

The IPRC can place an exceptional student in a:

- regular class with special education services;
- regular class but taken out for part of the day for special services or special education instruction from a special education teacher, an educational assistant or other specialist;
- special education class with part of the day in a regular class;
- special education class for the whole day; or
- special education school.

The IPRC may refer the student to a provincial committee for admission to one of the Provincial Schools for Blind, Deaf or Deaf-Blind students or to one of the Provincial Demonstration Schools for students with severe learning disabilities. These schools do not have to accept a student if they do not have room or think their program is not suitable.

The IPRC cannot place a student in a treatment facility or special care facility (also called Section 23 programs). This kind of educational setting must be requested by the parent.

What if a parent disagrees with an IPRC decision?

If a parent disagrees with the identification and/or the placement, they must file a notice of appeal with the secretary of the school board saying what part of the IPRC decision they disagree with (identification and/or placement) and give reasons for the disagreement. The IPRC can then hold a second meeting; and will confirm the first decision or change the decision. If a parent is still not satisfied with the decision after the second meeting with the IPRC, they can appeal the IPRC decision to the Special Education Appeal Board (SEAB).

If the disagreement is about the programs or services the school board says it will provide, a parent can file a complaint with the Human Rights Tribunal of Ontario (HRTTO). For information, advice and help on this, contact the Human Rights Legal Support Centre (see back for contact information).

What happens at the Special Education Appeal Board(SEAB)?

The SEAB is a panel of 3 people who will review the IPRC decision. The school board or SEAB chair must give you written notice at least 10 days before the appeal board meets. Parents, and

students over 16, have the right to attend and participate in the meeting.

The process is slightly more formal than the IPRC and will review the information that is provided about the student's needs. If you have new or more complete expert information, you should ask the SEAB to consider it. It is unusual for lawyers to be present at a SEAB meeting.

Parents, students over 16, and the school board will receive a written statement of the SEAB's recommendations and their reasons. Within 30 days of receiving the statement from the SEAB, the school board must decide whether to accept or reject the recommendations. The school board must then send notice of its decision to the parents and students over 16.

What if the parent disagrees with the SEAB's decision?

The SEAB's decision can be appealed by writing to the:
Ontario Special Education Tribunal (OSET)
655 Bay Street, 14th Floor, Toronto, ON M7A 2A3
Tel: 416-326-1356 or 1-866-607-1240
E-mail: oset@ontario.ca

For more information about the OSET, including its processes and prior decisions:
www.sjto.gov.on.ca/oset/

What can happen at the Special Education Tribunal (SET)?

The SET has broad powers and its process is fairly formal. The school board usually has a lawyer and parents are allowed to have a lawyer for the appeal (see back for help finding a lawyer). Prior to a hearing, parents are often encouraged to participate in mediation to see if the school board and the family can come to an agreement beforehand; mediation is voluntary and confidential.

After the hearing, the SET may dismiss the appeal or grant the appeal and set aside the identification or placement, or both. If they grant the appeal they may substitute the identification and/or the placement decision. The SET can also recommend appropriate programs and services.

The SET decision must be given to everyone in writing and is final. All parties must follow the decision, including parents, students, principals and school boards. There is no automatic appeal to a court from the SET's decision but in some limited circumstances it may be possible to ask a court for a judicial review. Speak to a lawyer if you do not agree with the decision.

When does an IPRC get reviewed?

IPRC decisions must be reviewed once every school year.

Parents may also request an IPRC review after a student has been in a placement for 3 months. Within 15 days of receiving the request, the Principal must send the parent a written notice of the time and place of the IPRC review.

A Principal can ask for an IPRC review any time but must give the parents notice in writing.

What is an Individual Education Plan (IEP)?

Following an identification, the school must create an Individual Education Plan (IEP) for each exceptional student. The IEP should contain specific learning expectations and the school's outline of educational services to address them. For example, whether they will provide an educational assistant or whether a speech pathologist will work with the student every other week.

The IEP must also explain how the student's progress will be reviewed. For students who are 14 years of age or over (and not solely gifted), it must also include a plan for the student's transition into the world after high school.

Parents, and students over 16, must be consulted about the IEP and must be given a copy of the IEP within 30 days of a student's placement in a special education program.

What kinds of help is the student entitled to?

The school must provide "appropriate" programs and services. "Appropriate" does not mean that they have to be the best programs or services available anywhere but they must be good enough to meet the student's needs. This is sometimes a difficult area to work out with the school board. The SET has made it clear that finding the right placement must include some consideration of the programs and services that will be delivered.

If either the parent or student are not happy, they should speak with the Principal and/or the Special Education teacher, and may want to speak to the Superintendent in charge of special education, to explain why the program is not working.

Parents and students who do not believe the school is providing programs and services that accommodate their disability, may file a complaint with the Human Rights Tribunal of Ontario (see back for contact details).

Can an exceptional student be suspended or expelled?

Some Principals and school boards believe that they must suspend or seek to expel students for specific listed behaviours. This is wrong. If a student's actions are the result of their disability, then the school has a legal obligation to accommodate the disability before considering disciplinary action, for example, using closer supervision to address the behaviour.

If the school has accommodated the student's disability to the point of it causing an undue hardship to the school board, then the student can be disciplined for misconduct. This should happen only when other ways of maintaining order do not work.

If the student's disability has not been accommodated, the parent should appeal the suspension or fight the expulsion (see our other pamphlets on these topics). Parents and students may wish to file a complaint with the Human Rights Tribunal of Ontario if the appeal upholds the suspension or an expulsion is imposed.

Can an exceptional student be excluded from school?

A Principal may "refuse to admit" a student if the student's presence is "detrimental to the physical or mental well-being of pupils". Parents and students have a right to appeal this. Speak to a lawyer if this

happens.

What other rules apply to exceptional students?

The instructional day may be reduced to less than 5 hours if appropriate for the student. This decision can only be made by the school board, not the principal or superintendent.

Class sizes can be limited depending on the exceptionality of the students.

There is no right to transportation for any student under the *Education Act*. However, if the board does provide transportation, it must also provide appropriate transportation for students with disabilities.

Hey! I'm the actual student! Do I have any rights?

Once you turn 18, you hold all the rights. However, you might find it helpful to ask adults that you trust for support by having them attend meetings and appeals with you.

If you are 16 or older, you have the right to attend your IPRC; give them any information you think is useful; receive a copy of any information that others give the IPRC; and you must be consulted about your IEP. You are assumed capable to give or refuse consent to have health and/or psychological assessments done for the IPRC.

If you are under 16 and the IPRC thinks it is useful to interview you, the committee can only do so with your parent's consent.

RESOURCES:

Kids Help Phone - www.kidshelpphone.ca, 1-800-668-6868

People for Education - www.peopleforeducation.ca

Ontario Special Education Tribunal - www.oset-tedo.ca, 416-325-2829

Justice for Children and Youth - see below

Pro Bono Law Ontario - probonoontario.org/education_law/

Human Rights Legal Support Centre - www.hrlsc.on.ca, 416-597-4900 or 1-800-625-5179

Human Rights Tribunal of Ontario - www.hrto.ca, 416-326-1312 or 1-800-598-0322

This pamphlet gives general information about special education law in the public school system in Ontario. Speak to a lawyer or legal worker about specific questions. February 2018.

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